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CHARLES ELMORE DROPP
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1945.

JOSEPH ALFANO,
Petitioner,
Appellant below,

vs.

UNITED STATES OF AMERICA,
Respondent,
Appellee below,

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.**

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June, 1946.



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**PETITION FOR WRIT OF CERTIORARI TO THE
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FOR THE THIRD CIRCUIT.**

To the Honorable the Supreme Court of the United States.
Your petitioner respectfully shows:

1. Joseph Alfano, petitioner herein, prays that a writ of certiorari issued to review the judgment of the United States Circuit Court of Appeals for the Third Circuit in the above entitled cause entered on May 14, 1946, sustaining a conviction of the petitioner for a violation of the Receiving Stolen Public Property Act, Title 18 U. S. C., Section 101.

Opinion Below.

The District Court did not file an opinion. The opinion of the Circuit Court of Appeals has not yet been reported.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on May 14, 1946. The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 25th, 1925.

Question Presented.

1. Does the indictment charge an offense?

Statute Involved.

Title 18 U. S. C. A. Section 101. (Criminal Code, Section 48.)

RECEIVING STOLEN PUBLIC PROPERTY. Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than \$5,000, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender.

Statement.

An indictment was returned against Joseph Alfano and one, Patrick Cuttitta, attempting to charge them with a violation of the receiving Stolen Public Property Act, Title 18 U. S. C., Section 101 (R-3a). The defendant was tried on this indictment and the jury returned a verdict of guilty.

The Circuit Court of Appeals sustained the jury's verdict and held that though the indictment failed to allege all of the elements of the offense a fair construction of the same as a whole supplies the missing words.

The elements of the offense prohibited by the statute are, first, that the goods must have been stolen by someone other than the possessor; second, that they were the property of the United States; third, that the person possessing the same knew them to have been stolen; and fourth, that the possessor intended to convert them to his own use or gain.

Though the indictment charged the second, third and fourth elements of the offense it wholly failed to charge the first of the elements.

Reasons for Allowance of a Writ.

The Circuit Court of Appeals in effect decided that if an indictment is returned by a grand jury and fails to describe the offense defined in the statute a court may supply the missing words by construing the indictment and thus determine the intention of the grand jury.

The decision of the Circuit Court of Appeals conflicts with the decision of *United States vs. Mann*, 95 U. S. 580, 24 L. Ed. 531, and other representative cases.

In order that an indictment may charge an offense it must contain in it all of the elements of the crime prohibited by the statute.

The pertinent section of the code involved makes it an offense for anyone to retain in his possession, with intent to convert to his own use, any property of the United States which has theretofore been stolen by any other person, the person possessing the same knowing the same to have been stolen.

Therefore the elements of the offense are: First, that the goods must have been stolen by someone other than the possessor; second, that they were property of the United States; third, that the person possessing the same knew the same to have been stolen; and fourth, that the possessor intended to convert the same to his own use or gain.

The indictment in the instant case contains but three of these necessary elements, it does allege that the possessors knew the goods were stolen property and they intended to convert them to their own use and that the property was the goods and chattels of the United States, but it fails to set forth the other necessary element of the offense, namely; that the property had been stolen by someone other than the defendant.

Wherefore your petitioner prays that a writ of certiorari issue out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the

Third Circuit commanding the said Court to certify and send to this Court for its review and determination on a day certain to be designated a full and complete transcript of the record and all of the proceedings of the Circuit Court of Appeals in the said case, entitled in that Court, *United States of America vs. Joseph Alfano*, Appellant, No. 9113, to the end that this case may be reviewed and determined by this Court as provided for by the statutes of the United States, and that the judgment herein of the Circuit Court of Appeals be reversed by this Honorable Court and for such other and further relief as to this Court may seem proper and just.

Conclusion.

Your petitioner respectfully submits that the question presented by the foregoing petition shows a well defined conflict exists between the decision of the Circuit Court of Appeals and the decisions of this Court, that there is involved an important question of Federal Law and that this question should be reviewed by this Court.

Respectfully submitted,

GEORGE R. SOMMER,
Attorney for and of Counsel
with Petitioner.

June, 1946.